IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1377 OF 2007

Chandrakant Baburao Patil & Anr. ...Petitioners
Vs.
The Managing Director, Vasantdada Shetkari Sahakari Bank Ltd. Sangli & Ors. ...Respondents

Mr. M.D. Angal, Advocate for Petitioners
Mr. S.S. Patwardhan, Advocate for Respondents 1 to 3

CORAM: SHRI ABHAY S. OKA, J.
DATED: 30TH APRIL, 2007

P.C.

1. Heard the learned Advocate for the parties. The Petitioners are the disputants in a Dispute filed under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as said Act). The substantive prayer in the dispute is for a declaration that the first and second Respondents have already recovered the entire amount due and payable by 4th to 6th Respondents under Loan Account No.15/57 and therefore, it may be declared that the Petitioners stand discharged as guarantors. A prayer for perpetual injunction is made restraining the first two Respondents from attaching and selling the suit property i.e. Land bearing Gat No.581/4.

2. The trial Court rejected the application for temporary

injunction made by the Petitioner and the said order has been confirmed by the Co-operative Appellate Court.

3. The submission of the learned Counsel for the Petitioners is that the loan transaction for which the Petitioners were sureties was no longer subsisting as the entire amount due and payable on the basis of Certificate issued under Section 101 of the said Act has been already recovered by the first, second and the third Respondents. He submitted that there are documents on record to show that the entire amount has been recovered. He submitted that the said Respondents have illegally transferred a part of the amount received from the sale of the property of the borrowers towards some other account. He placed reliance on relevant provisions of the Indian Contract Act, and submitted that the Petitioners stand discharged as guarantors and therefore, the said Respondents cannot proceed against the property of the Petitioners.

4. In so far as the prayer for interim relief is concerned, the temporary injunction was sought restraining the first, second and third Respondents from attaching and selling the property of the Petitioners. The said prayer has been rejected by the Co-operative Court and the rejection has been confirmed by the Co-operative Appellate Court.

5. In case the property of the Petitioners is illegally attached, the Petitioners have an efficacious remedy under Sub Rule 19 of

Rule 107 of the Maharashtra Co-operative Societies Rules,1961 of raising an objection to the attachment on the ground that the property is not liable to such attachment. If such objection is raised, the Recovery Officer is an under obligation to investigate the claim or objection and dispose it of on merits. There is a power vesting in the Officer to postpone the sale till the objection raised to the attachment is decided. Sub Rule 19 further provides that after claim or objection preferred by a party is decided against him, he may file a suit to establish the right which he claims in the property in dispute and the order passed on the objection subject to the result of the suit shall be final. In view of availability of such remedy, the Courts below have rightly rejected the prayer for interim relief. Hence, no interference is called for. It is however, made clear that the remedy available to the Petitioners under the aforesaid Rule is kept open.

6. Subject to what is stated above, the Writ Petition is rejected.

JUDGE